

LETTER OPINION
94-L-163

June 14, 1994

Honorable Alvin A. Jaeger
Secretary of State
600 East Boulevard Avenue
Bismarck, ND 58505-0500

Dear Secretary of State Jaeger:

Thank you for your letter concerning the recent amendment to N.D.C.C. ? 43-07-10 dealing with renewals of contractors' licenses. The amendment to N.D.C.C. ? 43-07-10 provides:

The applicant shall include with the application a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance, and a certification that the applicant has submitted all payroll taxes including North Dakota income tax, workers' compensation premiums, and unemployment insurance premiums due at the time of renewal.

1993 N.D. Sess. Laws ch. 418, ? 2. (Emphasis supplied.)

You ask whether the term "payroll taxes" as used in the statute includes those taxes and premiums required to be paid both under North Dakota law as well as those due under federal law.

The phrase "payroll taxes" is not defined in N.D.C.C. ch. 43-07. The only definition in the North Dakota Century Code for that term appears in N.D.C.C. ch. 50-24.4 dealing with nursing home rates. "Payroll taxes" are defined in N.D.C.C. ? 50-24.4-01(15) as meaning "the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes." The definition given words and phrases in one statute can be utilized in determining the meaning of those same words or phrases in another statute. Larson v. Baer, 418

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N.W.2d 282 (N.D. 1988).

"Payroll tax" is defined in Black's Law Dictionary as:

A tax on an employees' [sic] salary or on the income of a self-employed individual. Federal and state income taxes are paid by the employee or the self-employed individual; social security taxes are paid both by the employer and employee and paid solely by the self-employed individual. Unemployment taxes are paid by the employer.

Black's Law Dictionary 1129-30 (6th ed. 1990). Both of these definitions include payroll taxes that are either exclusively federally mandated, e.g., FICA (social security) taxes, or that are mandated by both federal and state law, e.g., income taxes and unemployment compensation taxes.

The statute, N.D.C.C. ? 43-07-10, uses the term "all payroll taxes" which shows the Legislature's intent to require certification of payment of more than just state-mandated payroll taxes. Although two of the examples of payroll taxes and premiums listed in the statute are state-mandated (state income tax and workers' compensation premiums), the third example, unemployment compensation taxes, is mandated by both federal and state law.

In addition, when enumerating the several examples of payroll taxes, the statute uses the word "including."

The use of the word "includes" ordinarily indicates an incomplete list. Livingood v. Meece, 477 N.W.2d 183, 194 (N.D. 1991). By using the word "including" in the statute, the Legislature indicated its intent to list several examples of payroll taxes rather than providing an all inclusive list.

Based on the foregoing, it is my opinion that when a contractor is renewing a license pursuant to N.D.C.C. ? 43-07-10, such contractor must certify payment of any and all payroll taxes including those required to be paid under North Dakota law and those required to be paid under federal law.

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Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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